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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

XPB-89-303-1020

Office: SAN DIEGO

Date:

MAR 17 2009

IN RE:

Applicant:

APPLICATION:

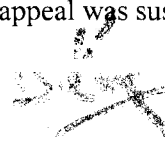
Application for Adjustment from Temporary to Permanent Resident Status under
Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C.
§ 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status was denied by the District Director, San Diego, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had been convicted of three or more misdemeanors and denied the application.

On appeal, the applicant asserts that he is sorry for his past behaviors. The applicant contends that the California Department of Justice criminal history transcript shows that he has been convicted of only two misdemeanors. The applicant further contends that his California Department of Motor Vehicles record does not show the vehicle code misdemeanor cited in the director's decision.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. 8 C.F.R. § 245a.3(c)(1).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term actually served, if any; or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception when the offense is defined by the state as a misdemeanor and the sentence actually imposed is one year or less, regardless of the term actually served. Under this exception, for purposes of 8 C.F.R. § 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

"Conviction" is defined under section 101(a)(48)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(48)(A) as a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

Court dispositions in the record of proceedings reveal the applicant was convicted of the following two misdemeanors:

1. On March 1, 1999, the applicant was convicted of *failure to appear after signing citation or court continuance* in violation of section 40508(a) of the California Vehicle Code (Municipal Court of California, County of San Diego, San Diego Judicial District, [REDACTED]). An individual convicted of this offense is guilty of a misdemeanor regardless of the disposition of the charge upon which he or she was originally arrested. Cal. Vehicle Code § 40508(a) (West 1999). A misdemeanor offense

under the vehicle code constitutes a maximum sentence of imprisonment in the county jail not exceeding six months. Cal. Vehicle Code § 42002 (West 1999).

2. On September 24, 2003, the applicant was convicted of *tampering with an electric, telephone and cable television line* in violation of section 591 of the California Penal Code (Superior Court of California, County of San Diego, [REDACTED]). The maximum term of imprisonment for this offense is imprisonment in the county jail not exceeding one year. Cal. Penal Code § 591 (West 2003).

The record contains the applicant's California Department of Motor Vehicles driving record, which reveals that he was convicted of the following misdemeanor:

3. On June 25, 1998, the applicant was convicted of *driving without a valid license* in violation of section 12500(a) of the California Vehicle Code (court unknown, [REDACTED]). A violation of 12500(a) is considered a misdemeanor under the California Vehicle Code. Cal. Vehicle Code § 40000.11 (West 1998). As stated above, a misdemeanor offense under the vehicle code constitutes a maximum sentence of imprisonment in the county jail not exceeding six months. Cal. Vehicle Code § 42002 (West 1999).

Finally, a Federal Bureau of Investigation (FBI) report based upon the applicant's fingerprints reveals that he has been convicted of the following misdemeanor:

4. On June 30, 1992, the applicant was convicted of *resisting, delaying or obstructing a public officer* in violation of section 148(a) of the California Penal Code. The maximum term of imprisonment for this offense is one year. Cal. Penal Code § 148(a) (West 1992) (San Diego Municipal Court [REDACTED]).¹ The applicant was sentenced to three years probation. Court dispositions in the record show that on October 20, 1997 and February 17, 1999, the applicant was charged with probation violations in this case.

Therefore, the applicant's claim that he has only been convicted of two misdemeanors is not supported by the record. The foregoing documents reveal that the applicant has been convicted of at least four misdemeanors. The applicant has not furnished court dispositions that would indicate otherwise. The AAO notes that the burden is on the applicant to provide affirmative evidence that he is eligible for the benefit sought. The AAO finds that the applicant has failed to provide such evidence in these proceedings.

The applicant stands convicted of four misdemeanors. He is therefore ineligible for adjustment to permanent resident status pursuant to 8 C.F.R. § 245a.3(c)(1). No waiver of such ineligibility is available.

¹ The applicant also furnished a California Department of Justice Criminal History Transcript that corroborates his conviction for this offense.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.